

House Study Bill 202 - Introduced

HOUSE FILE _____
BY (PROPOSED COMMITTEE
ON COMMERCE BILL BY
CHAIRPERSON SODERBERG)

A BILL FOR

1 An Act relating to expert witness standards, damage awards, and
2 proportionate liability in medical malpractice actions.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 147.139, Code 2011, is amended to read
2 as follows:

3 **147.139 Expert witness standards.**

4 If the standard of care given by a physician and surgeon
5 or an osteopathic physician and surgeon licensed pursuant
6 to chapter 148, or a dentist licensed pursuant to chapter
7 153, is at issue, the court shall only allow a person to
8 qualify as an expert witness and to testify on the issue of
9 the appropriate standard of care ~~if the person's medical or~~
10 ~~dental qualifications relate directly to the medical problem or~~
11 ~~problems at issue and the type of treatment administered in the~~
12 case, breach of the standard of care, or proximate cause if
13 all of the following qualifications are established:

14 1. The expert is licensed to practice medicine, osteopathic
15 medicine, or dentistry and in the three years preceding the
16 allegedly negligent act, was engaged in the active practice
17 of medicine, osteopathic medicine, or dentistry, or was a
18 qualified instructor at an accredited university of medicine
19 and surgery, osteopathic medicine and surgery, or dentistry.

20 2. The expert practices or provides university instruction
21 in the same or substantially similar specialty as the
22 defendant.

23 3. If the defendant is board-certified in a specialty,
24 the expert is also certified in that specialty by a board
25 recognized by the American board of medical specialties and is
26 licensed and in good standing in each state of licensure, and
27 has not had the expert's license revoked or suspended in the
28 past five years.

29 Sec. 2. Section 668A.1, Code 2011, is amended by adding the
30 following new subsection:

31 NEW SUBSECTION. 4. a. In any action for damages for injury
32 or death against any health care provider, whether based in
33 tort, contract, or otherwise, arising out of an act or omission
34 in connection with the provision of health care services,
35 punitive or exemplary damages may be awarded only if the jury

1 is unanimous in regard to finding liability and the amount of
2 exemplary or punitive damages.

3 **b.** Notwithstanding section 668.4, in any action brought
4 under subsection 1 in which there are two or more defendants,
5 an award of punitive or exemplary damages shall be specific
6 as to a defendant, and each defendant is liable only for the
7 amount of the award made against that defendant.

8 **c.** For purposes of this subsection, "*health care provider*"
9 means a physician as defined in section 135.1, an advanced
10 registered nurse practitioner licensed pursuant to chapter 152,
11 a hospital as defined in section 135B.1, and a health care
12 facility as defined in section 135C.1.

13 Sec. 3. NEW SECTION. **668B.1 Title.**

14 This chapter may be cited as the "*Noneconomic Damage Awards*
15 *Against Health Care Providers Act*".

16 Sec. 4. NEW SECTION. **668B.2 Definitions.**

17 As used in this chapter, unless the context otherwise
18 requires:

19 1. "*Health care provider*" means a physician as defined
20 in section 135.1, an advanced registered nurse practitioner
21 licensed pursuant to chapter 152, a hospital as defined in
22 section 135B.1, and a health care facility as defined in
23 section 135C.1.

24 2. "*Health care services*" means services that involve
25 diagnosis, treatment, medical evaluation, advice, or such acts
26 as may be permissible under the health care licensing statutes
27 of this state.

28 3. "*Noneconomic damages*" means damages arising from
29 pain, suffering, inconvenience, physical impairment, mental
30 anguish, emotional pain and suffering, loss of chance, loss of
31 consortium, and any other nonpecuniary damages.

32 Sec. 5. NEW SECTION. **668B.3 Damage awards.**

33 3. In any action for damages for injury or death against
34 any health care provider, whether based in tort, contract, or
35 otherwise, arising out of an act or omission in connection with

1 the provision of health care services, the injured plaintiff
2 shall be entitled to recover noneconomic damages, but such
3 damages shall not exceed the following amounts, except upon a
4 finding of actual malice on the part of the defendant:

5 a. In any action against a single health care provider, two
6 hundred fifty thousand dollars.

7 b. In any action a against certified class of health care
8 providers, five hundred thousand dollars.

9 EXPLANATION

10 This bill relates to expert witness standards, damage
11 awards, and proportionate liability in medical malpractice
12 actions.

13 The bill provides that if the standard of care given by a
14 physician or surgeon, or an osteopathic physician or surgeon
15 licensed pursuant to Code chapter 148, or a dentist licensed
16 pursuant to Code chapter 153, is at issue in a medical
17 malpractice case, the court shall only allow a licensed health
18 care provider to qualify as an expert witness and to testify
19 on the issue of the appropriate standard of care, breach of
20 that standard, or proximate cause if the health care provider
21 meets certain professional practice and educational criteria.
22 Current law relating to expert witness standards in a medical
23 malpractice action allows a person to testify as an expert
24 witness and to testify on the appropriate standard of care if
25 the person's medical or dental qualifications relate directly
26 to the medical problem at issue and the type of treatment
27 involved.

28 The bill provides that in any action for damages for injury
29 or death against any health care provider, whether based in
30 tort, contract, or otherwise, arising out of an act or omission
31 in connection with the provision of health care services,
32 punitive or exemplary damages may be awarded only if the jury
33 is unanimous in regard to finding liability and the amount of
34 exemplary or punitive damages. Notwithstanding Iowa's rule
35 of joint and several liability in Code section 668.4, in any

1 medical malpractice action in which there are two or more
2 defendants, an award of punitive or exemplary damages shall be
3 specific as to a defendant, and each defendant is liable only
4 for the amount of the award made against that defendant.

5 The bill provides that in any action for noneconomic damages
6 for injury or death against any health care provider whether
7 based in tort, contract, or otherwise, arising out of an act
8 or omission in connection with the provision of health care
9 services, the injured plaintiff shall be entitled to recover
10 noneconomic damages not to exceed \$250,000 from a single
11 defendant or \$500,000 from a certified class of defendants,
12 except upon a finding of actual malice on the part of the
13 defendant.

14 "Noneconomic damages" is defined as damages arising from
15 pain, suffering, inconvenience, physical impairment, mental
16 anguish, emotional pain and suffering, loss of chance, loss of
17 consortium, and any other nonpecuniary damages.

18 For purposes of the damage award provisions in the bill that
19 are to be codified in Code chapters 668A and 668B, "health
20 care provider" means a physician defined as a person licensed
21 to practice medicine and surgery, osteopathic medicine and
22 surgery, osteopathy, chiropractic, podiatry, or optometry
23 under the laws of this state pursuant to Code section 135.1,
24 an advanced registered nurse practitioner licensed pursuant
25 to Code chapter 152, a hospital defined as a place which
26 is devoted primarily to the maintenance and operation of
27 facilities for the medical diagnosis, treatment, or care over a
28 period exceeding 24 hours of two or more nonrelated individuals
29 pursuant to Code section 135B.1, and a health care facility
30 defined as a residential care facility, a nursing facility, an
31 intermediate care facility for persons with mental illness,
32 or an intermediate care facility for persons with mental
33 retardation pursuant to Code section 135C.1.